

CAUSE NO. D-1-GN-11-003130

TEXAS TAXPAYER & STUDENT FAIRNESS COALITION, et al., Plaintiffs,	§ § §	IN THE DISTRICT COURT OF
VS.	§	TRAVIS COUNTY, TEXAS
MICHAEL WILLIAMS, Commissioner of Education, et al., Defendants.	§ § §	200 TH JUDICIAL DISTRICT

**TEXAS TAXPAYER & STUDENT FAIRNESS COALITION, ET AL.'S
TRIAL BRIEF**

At the pretrial conference, the Court specifically asked how many districts were still subject to the original Senate Bill 7 hold harmless provisions. The parties agreed that the number is between 20 and 25. The Court then talked specifically about the Supreme Court's tax rate gap analysis in *Edgewood IV* and how when making a current tax rate gap analysis it could be "apples to apples and oranges to oranges."

The *Edgewood IV* opinion made a calculation that was not made at trial to determine that the richest districts containing 15% of the weighted students obtained an average of \$28.74 per penny of tax effort while the poorest districts containing 15% of the weighted students obtained an average of \$26.74 per penny of tax effort. *Edgewood Indep. Sch. Dist. v. Meno*, 917 S.W.2d 717, 731 n.12 (Tex. 1995). The Supreme Court based its calculation upon full implementation of Senate Bill 7, when all hold harmless districts were to be phased out. *Id.* Using these average yields the Supreme Court came up with its familiar 9¢ tax rate gap between rich and poor districts necessary to produce \$3,500 in revenue per weighted student, which was an amount it characterized as the amount necessary to get to gdk. *Id.*

As we now know, the hold harmless districts were never phased out. The Supreme Court thus produced its efficiency analysis based upon a school finance system that never existed. Because there was no evidence at trial on what tax rate would have been required for the hold

harmless districts to produce \$3,500 per weighted student, it is unclear what the true tax rate gap was at the time of *Edgewood IV*, although we know that it would have been more than 9¢. However, we submit that this is not an important issue in order to make a comparison between the current tax rate gap that includes hold harmless districts and the *Edgewood IV* tax rate gap that didn't.

In a later opinion specifically considering the constitutionality of these hold harmless districts, the Court stated that “[g]iven the closeness of the decision in *Edgewood IV*, the Court might well have reached a different conclusion had the ‘hold harmless’ districts been presented as a permanent part of the system architecture.” *Neeley v. W. Orange-Cove Consol. Indep. Sch. Dist.*, 176 S.W.3d 746, 792 (Tex. 2005) (*West Orange-Cove II*). Thus, while 9¢ understated the true tax rate gap in the system that occurred when the Legislature continued the hold harmless districts, the Court never approved any higher tax rate gap. When the Court finally had the opportunity to address equity in WOC II, the structure of the system was significantly different and thus that system and the current system cannot be compared to what the Court might have done in *Edgewood IV* had it included hold harmless districts in its analysis.

The calculation made in *Edgewood IV* was utilized to reflect the system as “fully implemented.” *Edgewood IV*, 917 S.W.2d at 731 n.12. The system that currently exists is also “fully implemented,” and although it may change in another five years as prescribed by the current statutes, as history teaches us it very well may not. Accordingly, comparing the current system as fully implemented, including the hold harmless districts, with the Senate Bill 7 system as if fully implemented is as close to an “apples to apples” comparison as can be made. Additionally, the funding systems are so different that simply adding in hold harmless to the *Edgewood IV* calculation or omitting hold harmless in our current calculations will not give an “apples to apples” comparison. The only tax gap the Supreme Court approved was a 9-cent gap

to get to \$3,500 per WADA (what was determined to be the amount necessary for a general diffusion of knowledge) at a time when standards were lower and the student population was not as economically disadvantaged. Further, the 9-cent gap was out of a possible \$1.50 and under today's system, the maximum a district can tax for M&O is \$1.17.

Respectfully submitted by,

GRAY & BECKER, P.C.
900 West Ave.
Austin, Texas 78701
Telephone: 512.482.0061
Fax: 512.482.0924

By: 
Richard E. Gray, III
State Bar No. 08328300
Toni Hunter
State Bar No. 10295900

Randall B. Wood
State Bar No. 21905000
Doug W. Ray
State Bar No. 16599200
RAY & WOOD
2700 Bee Caves Road #200
Austin, Texas 78746
Telephone: (512) 328-8877
Fax: (512) 328-1156
**Attorneys for the Texas Taxpayer & Student
Fairness Coalition Plaintiffs**

CERTIFICATE OF SERVICE

The undersigned certifies that on October 22, 2012, a true and correct copy of the foregoing was served upon the following counsel of record in accordance with the Texas Rules of Civil Procedure and the Texas Local Rules:

Shelley N. Dahlberg
Assistant Attorney General
Texas Attorney General's Office
General Litigation Division
P. O. Box 12548, Capitol Station
Austin, Texas 78711
Attorneys for the State Defendants

David G. Hinojosa
Marisa Bono
MEXICAN AMERICAN LEGAL DEFENSE AND
EDUCATIONAL FUND, INC.
110 Broadway, Suite 300
San Antonio, Texas 78205
Attorneys for the Edgewood ISD Plaintiffs

Mark R. Trachtenberg
HAYNES AND BOONE, LLP
1 Houston Center
1221 McKinney St., Suite 2100
Houston, Texas 77010

J. Christopher Diamond
The Diamond Law Firm, P.C.
17484 Northwest Freeway, Suite 150
Houston, Texas 77040

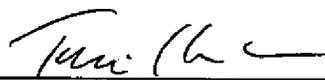
John W. Turner
Lacy M. Lawrence
HAYES AND BOONE, LLP
2323 Victory Avenue, Suite 700
Dallas, Texas 75219
*Attorneys for Plaintiffs, Calhoun County
ISD, et al.*

Craig T. Enoch
Melissa A. Lorber
Enoch Kever PLLC
600 Congress, Suite 2800
Austin, Texas 78701
Attorneys for Efficiency Intervenors

J. David Thompson, III
Philip Fraissinet
THOMPSON & HORTON, LLP
Phoenix Tower, Suite 2000
3200 Southwest Freeway
Houston, Texas 77027

Robert A. Schulman
Joseph E. Hoffer
Ricardo R. Lopez
Schulman, Lopez & Hoffer, L.L.P.
517 Soledad Street
San Antonio, Texas 78205-1508
Attorneys for the Charter School Plaintiffs

Holly G. McIntush
Thompson & Horton LLP
400 West 15th St., Suite 1430
Austin, Texas 78701
Attorneys for Ft. Bend ISD Plaintiffs



Richard E. Gray, III

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